

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

Illinois Commerce Commission	:	
On Its Own Motion	:	
-vs-	:	
United States Steel Corporation	:	
	:	10-0635
Determination under Section 5 of	:	
the Illinois Gas Pipeline Safety Act	:	
of the plan USS is to have in place	:	
for the inspection and	:	
maintenance of its pipeline	:	
facilities in and near its Granite	:	
City Works.	:	

PROPOSED INTERIM ORDER

By the Commission:

I. PROCEDURAL BACKGROUND

The Staff ("Staff") of the Illinois Commerce Commission Gas Pipeline Safety Program issued a report ("Staff Report") recommending that the Commission initiate a proceeding pursuant to Section 5 of the Illinois Gas Pipeline Safety Act, 220 ILCS 20/1 *et seq.*, regarding a plan that United States Steel Corporation ("U.S. Steel") should have in place for the inspection and maintenance of its pipeline facilities in and near its Granite City Works ("GCW") facility in Granite City, Illinois. The Commission initiated this proceeding through its November 4, 2010 Initiating Order. U.S. Steel filed a special and limited appearance, which contests and objects to the assertion of jurisdiction by the Commission. The initial phase of the case is limited to determining jurisdictional issues.¹

On April 11, 2011, Staff filed the direct testimony of Darin Burk, Manager of the Pipeline Safety Program of the Commission's Energy Division. Staff also filed the rebuttal and surrebuttal testimony of Mr. Burk on October 14, 2011, and December 2, 2011, respectively. On August 12, 2011, U.S. Steel filed the direct testimony of Gregory Baker, Area Manager-Energy and Iron-Making Utilities for U.S. Steel, and Keith Naeve, President of Naeve & Associates, an engineering consulting firm. U.S. Steel filed the rebuttal testimony of Mr. Baker on November 18, 2011. On March 22, 2012, an evidentiary hearing convened, and the testimonies were admitted into the record, in addition to supporting documents. Both Staff and U.S. Steel filed Initial Briefs on July 20, 2012. Staff filed its Reply Brief on August 24, 2012. U.S. Steel filed its Reply Brief

¹ Case Management Plan and Schedule on June 17, 2011.

on August 31, 2012. U.S. Steel filed a Motion to Strike or in the Alternative, to file a Reply Brief *Instantly* on September 11, 2012. All of this testimony concerned whether the Commission has jurisdiction.

II. BACKGROUND AND APPLICABLE AUTHORITY

GCW is a steel manufacturing facility. Portions of GCW perform different roles in the plant's production of steel, generally identified as coke making, iron making, utility operations, steelmaking, hot rolling, and finishing. GCW receives natural gas from Center Point Energy – Mississippi River Transmission Corporation (“MRT”), an interstate pipeline; upon delivery to GCW, the natural gas is supplied through GCW-owned piping to each of the previously described steel production steps or processes. GCW uses coke oven gas (“COG”) as a fuel source in place of natural gas for some of its processes. COG is a by-product of the GCW coke-making process. In 2008, GCW reported releases of small amounts of benzene from its COG lines to the National Response Center pursuant to the environmental laws.

The issue in the initial phase of the case is whether the Commission has jurisdiction over fuel lines carrying natural gas and coke oven gas at the U.S. Steel's GCW facility pursuant to the provisions of the Illinois Gas Pipeline Safety Act, 220 ILCS 20/1 *et seq.* (“IGPSA”), which relates to the federal Natural Gas Pipeline Safety Act, 49 U.S.C. §60101 *et seq.* (“NGPSA”). The NGPSA is intended to “provide adequate protection against risks to life and property by pipeline transportation and pipeline facilities” and it directs the United States Department of Transportation (“USDOT”) to “prescribe minimum safety standards for pipeline transportation and for pipeline facilities.”² USDOT has adopted regulations that set the minimum standards for the design, construction, inspection, testing, operation, and maintenance of pipeline facilities.³ The Pipeline and Hazardous Materials Safety Administration (“PHMSA”), one of the agencies within the USDOT, is responsible for implementing the federal pipeline safety program. State pipeline safety programs are required to adopt the federal regulations, which prescribe the minimum safety standards, and may adopt more stringent regulations for intrastate pipeline operators under state law.⁴

The IGPSA requires that standards established by the Commission must be at least as inclusive, as stringent, and compatible with, the minimum safety standards adopted by the USDOT under the NGPSA. *Id.* at 20/9. Section 5 of the IGPSA reads in relevant part that “[e]ach person who engages in the transportation of gas or who owns or operates pipeline facilities shall file with the Commission a plan for inspection and maintenance of each pipeline facility owned or operated by such person, as well as any changes in such plan, in accordance with regulations prescribed by the Commission.”⁵ Pursuant to the IGPSA, as of January 1, 2011, the Commission has adopted (1) by

² 49 U.S.C. §60102(a)(1), (2).

³ 49 C.F.R. Sec. 191.1 *et seq.* .

⁴ 49 U.S.C. §60105.

⁵ *Id.* at 20/5.

reference, the standards contained in 49 C.F.R. §§ 191.1, 191.3, 191.5, 191.7, 191.9, 191.11, 191.13, 191.15, 191.17, 191.23, 191.25, 192, 193 and 199, as its minimum safety standards for the transportation of gas and for gas pipeline facilities, and also (2) provisions relating to reports of accidents or incidents by persons engaged in the transportation of gas, or who own or operate gas pipeline facilities. Relating to the issue of jurisdiction, IGPSA states:

Transportation of gas" means the gathering, transmission, or distribution of gas by pipeline or its storage, within this State and not subject to the jurisdiction of the Federal Energy Regulatory Commission under the Natural Gas Act, except that it includes the transmission of gas through pipeline facilities within this State that transport gas from an interstate gas pipeline to a direct sales customer within this State purchasing gas for its own consumption. "Transportation of gas" also includes the conveyance of gas from a gas main through the primary fuel line to the outside wall of residential premises. If the gas meter is placed within 3 feet of the structure, the utility's responsibility shall end at the outlet side of the meter.

220 ILCS 20/2.03.

Sec. 2.04 further provides that:

"Pipeline facilities" includes new and existing pipe rights-of-way and any equipment, facility, or building used in the transportation of gas or the treatment of gas during the course of transportation and includes facilities within this State that transport gas from an interstate gas pipeline to a direct sales customer within this State purchasing gas for its own consumption, but "rights-of-way" as used in this Act does not authorize the Commission to prescribe, under this Act, the location or routing of any pipeline facility. "Pipeline facilities" also includes new and existing pipes and lines and any other equipment, facility, or structure, except customer-owned branch lines connected to the primary fuel lines, used to convey gas from a gas main to the outside wall of residential premises, and any person who provides gas service directly to its residential customer through these facilities shall be deemed to operate such pipeline facilities for purposes of this Act irrespective of the ownership of the facilities or the location of the facilities with respect to the meter, except that a person who provides gas service to a "master meter system", as that term is defined at 49 C.F.R. Section 191.3, shall not be deemed to operate any facilities downstream of the master meter.

220 ILCS 20/2.04.

III. U.S. STEEL'S MOTION TO STRIKE OR, IN THE ALTERNATIVE, TO FILE A RESPONSE *INSTANTER*

A. U.S. Steel's Position

U.S. Steel disputes the inclusion of the argument in Staff's Reply Brief of information supporting the assertion that both the natural gas and the COG pipes could be defined as "distribution" pipes, or in the alternative, "transmission" pipes. U.S. Steel stated that it was "unfairly prejudiced by Staff's entirely new and unfounded claim."⁶ U.S. Steel stated that Staff "failed to present relevant testimony, conduct cross-examination or discovery, or argue this claim in its Initial Brief."⁷ U.S. Steel contends that, unless it is permitted to respond and cross-examine witnesses, U.S. Steel is denied due process.⁸

B. Staff's Position

According to Staff, U.S. Steel was given sufficient notice that the characterization as a "distribution" pipe could be assessed based on the Order Initiating the Proceedings filed on November 4, 2011. One of the objectives of the proceeding listed was to determine "which operations and transportation involve the 'distribution' of gas, and which involve the 'transmission' of gas, as those terms are defined at 49 CFR 192.3, which are incorporated by reference in Commission rules at 83 Ill. Adm. Code 590.10, adopted under the authority provided in Section 3 of the Illinois Gas Pipeline Safety Act (220 ILCS 20/3)."⁹ Thus, Staff essentially argues that the initiating Order in this proceeding placed U.S. Steel on notice that these laws would or could be the subject of this proceeding. Staff states that U.S. Steel had the opportunity to cross-examine the witness at the evidentiary hearing held on March 22, 2012. Further, Staff contends that the exhibits referenced in its Reply Brief were admitted into evidence at the evidentiary hearing.¹⁰

C. Analysis and Conclusion

Due process guarantees "the opportunity to be heard, the right to cross-examine adverse witnesses, and impartial rulings on the evidence."¹¹ Staff did provide adequate notice regarding its argument about distribution lines in its Reply Brief. The documents Staff referenced in its Reply Brief were available to U.S. Steel in the docket in this proceeding. Moreover, U.S. Steel had notice that a "distribution" line would constitute as a transportation line based on the pertinent statute. According to 220 ILCS 20/8, "except

⁶ U.S. Steel's Motion to Strike, at 5.

⁷ U.S. Steel's Motion to Strike, at 1.

⁸ U.S. Steel's Motion to Strike, at 3.

⁹ Order Initiating the Proceedings on November 4th, 2010, at 6.

¹⁰ Staff Response to U.S. Steel's Motion, at 1-2.

¹¹ Gigger v. Board of Fire & Police Commissioners of City of East St. Louis, 23 Ill. App. 2d 433, 439 (4th Dist. 1960).

as otherwise provided in this Act, the Public Utilities Act applies to the pipeline facilities and to persons engaged in the transportation of gas or operating pipeline facilities.” Within the statute, the “transportation of gas” is defined as the “gathering, transmission, or distribution of gas by pipeline or its storage”¹² Further, U.S. Steel stated that the “distribution” argument would “violate well-established rules of statutory construction,” because it would render the statutory language “superfluous”.¹³ Thus, it was not the new argument the U.S. Steel claims it was. Based on U.S. Steel’s Reply Brief filed on August 31, 2012, it is apparent that U.S. Steel had an opportunity to address the argument that its pipelines could be deemed distribution lines. U.S. Steel’s Motion to Strike or in the Alternative to File a Response *Instantly* is therefore denied.

IV. JURISDICTION

A. Staff’s Position

Staff contends that the Commission has jurisdiction over the GCW natural gas and coke oven fuel lines because they are used for the “transportation of gas”. Staff cites reports that were provided prior to the initiation of this Docket provided by C. Lindsay Enloe of USDI and another of Larry Kotys and Paul Oleksa of M.K. Technologies, which support Staff’s argument that natural gas lines are legally “distribution lines.”¹⁴ U.S. Steel’s witness, M.K. Technologies, stated that there are “characteristics of a typical small distribution system” based on the construction of the “mains and services lines ... [that] serve multiple customers.”¹⁵ In the alternative, Staff argues that the natural gas lines are “transmission” lines. The definition of “transmission” provided by Staff is “to send or transfer from one ... place to another[.]”¹⁶

Staff argues that the COG pipelines can be considered a “transmission” line based on testimony from U.S. Steel’s expert witness. The expert witness, Paul Oleska, supports that “a large custom tap off of a transmission line is itself a transmission line, irrespective of ownership of that gas being transported.”¹⁷ In the alternative, Staff argues COG pipelines are “distribution” pipelines. Staff contends that the response from PHMSA supports the conclusion that the Commission has jurisdiction.

B. U.S. Steel’s Position

U.S. Steel asserts that the Commission does not have jurisdiction over GCW’s natural gas and coke oven gas lines because the lines are not used for the “transportation” of gas, as that term is defined by law under the IGPSA. U.S. Steel argues that Staff’s proposed use of the dictionary definition of the word “transmission,”

¹² 220 ILCS 20/2.03.

¹³ U.S. Steel Reply Brief, at 9.

¹⁴ Staff Ex. 1.01, App. A, Att. 5, at 2.

¹⁵ Staff Reply Brief, at 4.

¹⁶ Staff’s Initial Brief, at 13.

¹⁷ Staff Ex. 1.01, App. A, Att. 9, at 5.

i.e., to “admit the passage of,” is broad enough to cover any movement of gas within pipes, and consequently render the words “gathering” and “distribution” in the definition of “transportation” mere surplusage, in violation of the well-established statutory construction principle which provides that statutes should be construed “so as to avoid rendering superfluous” any statutory language.

U.S. Steel maintains that these lines are not “gathering lines” because they do not transport gas from a current production facility to a transmission line or a main, and they are not “transmission lines,” because they do not transport gas from a gathering line or a storage facility to a distribution center, storage facility, or a large-volume customer that is not down-stream from a distribution center that operates at a hoop stress of 20% or more of SMYS; and they do not transport gas within a storage field. U.S. Steel states that the PHMSA Letter is therefore not “definitive” on the issue of jurisdiction.

C. Analysis and Conclusion

GWC’s pipes fall within the statutory definition of “transportation of gas” provided in IGPSA. When there is not a statutory definition provided for a term, the plain and ordinary interpretation of the statutory language should be applied.¹⁸ The definition of “transmission” provided in Merriam-Webster Dictionary is “the act of transmitting.”¹⁹ To determine what the act entails, the word “transmit” can be defined as, “to send or convey from one person or place to another.”²⁰

A “distribution” line, based on testimony of U.S. Steel’s witness, is a system [that] consists of mains and services lines, and serves multiple customers.”²¹ The expert witness states that the natural gas pipes meet “all the definition requirements of a small distribution system,” based on that definition.²² This evidence establishes that GWC’s natural gas lines are “distribution” lines. Thus, the natural gas lines at issue here are “transportation” lines, and they should be regulated under IGPSA.

U.S. Steel’s argument that the COG lines are not transmission lines because the “gas that has reached and is in control of the end user” is contradicted by expert witness testimony that states that “the direction or ownership of the gas is irrelevant” when determining if the gas is considered “transmitted”.²³ U.S. Steel concedes that gas is spread from its pipeline to an end point. Based on the plain and ordinary definition of a “transmission line,” GWC’s COG pipelines are “transportation” lines, and they should be regulated under IGSPA.

¹⁸ See, e.g., In re. Estate of Riordan, 351 Ill. App. 3d 594, 596; 814 N.e.2d 597 (3rd Dist. 2004).

¹⁹ www.merriam-webster/dictionary/transmission.com.

²⁰ www.merriam-webster/dictionary/transmit.com.

²¹ Staff Ex. 1.01, App. A, Att. 5 at 3, 6-8; Staff Reply Brief, at 4.

²² Staff Reply Brief, at 4.

²³ U.S. Steel’s Reply Brief, at 2.

V. FINDINGS AND ORDERING PARAGRAPHS

The Commission, having given due consideration to the entire record herein and being fully advised in the premises, is of the opinion and finds that:

- (1) United States Steel Corporation's Granite City Works is a steel manufacturing facility engaged in the business of manufacturing steel in the State of Illinois;
- (2) Granite City Works' operation of its natural gas and coke oven gas lines does constitute as "transportation" of gas under the Illinois Gas Pipeline Safety Act;
- (3) the Commission does have jurisdiction over the subject matter herein.

IT IS THEREFORE ORDERED by the Illinois Commerce Commission that the Illinois Gas Pipeline Safety Act is applicable to the natural gas and COG fuel lines at the GCW facility.

IT IS FURTHER ORDERED that all motions, petitions, objections, and other matters in this proceeding will proceed.

IT IS FURTHER ORDERED that, subject to the provisions of Section 10-113 of the Public Utilities Act and 83 Ill. Adm. Code 200.880, this Order is not final; it is not subject to the Administrative Review Law.

DATED: July 22, 2013

Michael L. Wallace
Chief Administrative Law Judge

Briefs on Exceptions: August 6, 2013
Reply Briefs on Exceptions: August 20, 2013